

Southern Railway System

Law Department

P.O. Box 1808

Washington, D.C. 20013

(202) 383-4000

My Direct Line Is: (202)383-4417

April 8, 1982
59080, 57915

6057-H
RECORDATION NO. Filed 1425

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

APR 8 1982 - 4 25 PM

INTERSTATE COMMERCE COMMISSION

Dear Mrs. Mergenovich:

I enclose six original counterparts of the document described in paragraph (1) hereof for recordation pursuant to Section 11303 of Title 49 of the U.S. Code and return, together with an original counterpart thereof for retention by the Commission.

In accordance with 49 CFR Part 1116, covering the recordation of documents, I advise you as follows:

- (1) The enclosed document is a Supplemental Agreement and Assignment dated as of March 1, 1982 between Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015, Trustee-Lessor, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013, Lessee, and The Alabama Great Southern Railroad Company, P.O. Box 1808, Washington, D.C. 20013, Assignee, and is a "secondary document" under 49 CFR §1116.1.
- (2) The "primary document" to which the enclosed secondary document is connected is an Equipment Trust Agreement between the Trustee-Lessor and the Lessee, dated as of March 15, 1971, constituting Southern Railway Equipment Trust No. 2 of 1971, which was filed and recorded in your office on February 23, 1971 at 1:45 P.M. and assigned recordation No. 6057.
- (3) We request that the enclosed document be cross-indexed.
- (4) The enclosed document was executed for the purpose of subjecting to the Equipment Trust Agreement certain new Equipment, being:

2 new 100-ton 3,600 cu. ft. capacity Open Top Hopper Cars bearing Lessee's road numbers 360375 and 360526, AAR designation HT;

and for the purpose of assigning to the Assignee a portion of the right, title and interest of the Lessee in and to the Equipment Trust Agreement, as amended, and a portion of the new Equipment by this document subjected to the Equipment Trust Agreement, namely Car No. 360526.

Each unit of Equipment will be marked in letters not less than one-half inch in height with the words:

SOUTHERN RAILWAY EQUIPMENT TRUST NO. 2 OF 1971; MORGAN GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, OWNER, LESSOR.

- (5) The names and addresses of the parties to the enclosed document are shown in paragraph (1) hereof.
- (6) After recordation, the six original counterparts of the enclosed document not required by the Commission for recordation should be returned to David R. Willson, Esq., General Attorney, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013.
- (7) The recordation fee of \$10 is enclosed.
- (8) A short summary of the enclosed document for index use follows:

This is a Supplemental Agreement and Assignment dated as of March 1, 1982 among Morgan Guaranty Trust Company of New York, Trustee-Lessor, Southern Railway Company, Lessee, and The Alabama Great Southern R.R., Assignee, subjecting additional equipment [2. 100-ton 3,600 cu. ft. capacity Open Top Hopper Cars, ## 360375 and 360526] to an Equipment Trust Agreement bearing recordation No. 6057. In addition, this document assigned to the Assignee certain of Lessee's rights in a portion of the additional equipment, being # 360526.

Please acknowledge receipt on enclosed copy of this letter.

Very truly yours,


David R. Willson
General Attorney

Encl.

6062

RECORDATION NO. _____ Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

1.

Bo/ Cars

LEASE AGREEMENT
FOR RAILROAD EQUIPMENT

dated as of
February 15, 1971

Between

C.I.T. CORPORATION

Lessor

acting herein through its Agent
C.I.T. Leasing Corporation

and

DETROIT, TOLEDO AND IRONTON
RAILROAD COMPANY

Lessee

LEASE AGREEMENT FOR RAILROAD EQUIPMENT (hereinafter called "Lease"), dated as of February 15, 1971, between C.I.T. Corporation, a New York corporation (hereinafter called the "Lessor"), acting herein through its agent and affiliate, C.I.T. Leasing Corporation, a Delaware corporation (hereinafter called the "Agent") and Detroit, Toledo and Ironton Railroad Company, a Delaware corporation (hereinafter called the "Lessee"),

W I T N E S S E T H:

SECTION 1. Definitions. Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Lease:

(a) "Casualty Occurrence" shall have the meaning specified in Section 7 hereof.

(b) "Certificate of Delivery" shall mean each of the Certificates of Delivery, substantially in the form of Annex B hereto, entered into between the Lessor and the Lessee for the purpose of leasing Units, pursuant to the provisions of this Lease, which shall incorporate by reference all of the provisions of this Lease.

(c) "Closing Date" for a Unit shall mean the date upon which payment for such Unit is due to the Vendor thereof from the Lessor.

(d) "Delivery Date" for a Unit shall mean the date of the Certificate of Delivery covering such Unit, which date shall be the date such Unit is delivered to, and accepted by, the Lessor under the Purchase Order and the Purchase Order Assignment therefor, as such date is set forth in the Certificate of Delivery for such Unit.

(e) "Equipment" shall mean the railroad cars described in Annex A hereto and any and all appliances, parts or other equipment of whatever nature so long as the same shall be incorporated in, installed in or attached to any such railroad car.

(f) "Events of Default" shall have the meaning specified in Section 10 hereof.

(g) "Investment Agreement" shall mean that certain Investment Agreement dated as of February 15, 1971 between the Lessee and the Lessor, whereby, among other things, the Lessor agreed to invest in the Units by payment of the Purchase Price therefor as therein provided.

(h) "Purchase Order" shall mean the following purchase order:
Purchase Order No. A75711 dated November 16, 1970
between the Lessee and Greenville Steel Car Company,
providing for the manufacture and the sale to the
Lessee of seventeen 86 foot 6 inch high cube box
cars.

(i) "Purchase Order Assignment" shall mean the following purchase order assignment:

That certain Purchase Order Assignment dated as of February 15, 1971 between the Lessor and the Lessee with respect to Purchase Order No. A75711 providing to the extent therein set forth, for the assignment to the Lessor of the Lessee's right, title and interest in and to said Purchase Order.

(j) "Purchase Price" for a Unit shall mean an amount equal to the lesser of the maximum price specified for such Unit in Schedule A to the Investment Agreement or the sum of (i) the

amount payable to the Vendor under the Purchase Order for such Unit and (ii) any excise taxes and normal delivery costs applicable to such Unit.

(k) "Term" shall mean, in the case of each Unit, the term for which such Unit is leased pursuant to Section 3 hereof.

(l) A "Unit" shall mean each of the railroad cars constituting the Equipment.

(m) The "Vendor" shall mean Greenville Steel Car Company.

SECTION 2. Agreement to Lease the Equipment. The Lessor hereby agrees to accept and lease to the Lessee hereunder (provided that the conditions of Section 2(b) of the Investment Agreement are complied with), and the Lessee hereby agrees to lease from the Lessor hereunder, each Unit which shall be delivered on or before April 15, 1971 by the Vendor thereof to the Lessor pursuant to the Purchase Order and the Purchase Order Assignment therefor and which shall be delivered by the Lessor and accepted by the Lessee hereunder as evidenced by the execution by the Lessee of a Certificate of Delivery leasing such Unit hereunder. The Lessor will cause each Unit accepted by the Lessor pursuant to the Purchase Order therefor to be tendered to the Lessee at the point within the Continental United States at which such Unit is delivered to the Lessor under the Purchase Order therefor. Upon such tender the Lessee will cause its authorized representative to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor a Certificate of Delivery effective as of the date of such tender for the purpose of leasing such Unit under and pursuant to the terms of this Lease; whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all of the terms and conditions of this Lease.

SECTION 3. Rentals and Term. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease sixty consecutive quarter-annual payments, as follows:

(a) the first such payment shall be payable on June 15, 1971 and shall be in an amount equal to the product of (i) .0349311 % of the Purchase Price for such Unit, times (ii) the number of days from and including the Delivery Date of such Unit to June 15, 1971, and which shall be followed by;

(b) fifty-nine rental payments, each in an amount of 3.1438% of the Purchase Price for such unit and which shall be payable on each subsequent quarter-annual anniversary of the first rental payment due date, to and including the fifty-ninth such quarter-annual anniversary date.

If any of the payment dates referred to above is not a business day, the payment otherwise then payable shall be payable on the next succeeding business day.

All payments provided for in this Lease to be made to the Lessor including, but not limited to the payments required under Section 7 of this Lease, shall be made to the Agent at its office at 650 Madison Avenue, New York, N.Y. or at such other place as the Lessor shall specify in writing.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or

future claims of the Lessee against the Lessor under this Lease or otherwise or against any person or any entity having a beneficial interest in any Unit; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units leased hereunder from whatsoever cause, the prohibition of or other restriction against the Lessee's use of all or any of such Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

The term of this Lease as to each Unit shall begin on the Delivery Date of such Unit and, subject to the provisions of Section 7, 10 and 13 hereof, shall terminate on the date on which the final quarter-annual payment of rent in respect thereof is due hereunder.

SECTION 4. Lessee's Representations and Warranties. The Lessee represents and warrants that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. this Lease, the Investment Agreement, and the Purchase Order Assignment have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms;

C. this Lease when filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act will protect the Lessor's interest in and to the Units leased hereunder and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units leased hereunder;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease, the Investment Agreement, and the Purchase Order Assignment will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound;

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect any property or interests therein of the Lessee, now attaches or hereinafter will attach to the Units leased hereunder or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder (subject to all terms and provisions of this Lease) in and to the Units leased hereunder;

G. there are no suits or proceedings pending or, to the knowledge of the Lessee, threatened in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the Lessee, which may have a material adverse effect on the financial condition or business of the Lessee;

H. the copy of the Purchase Order heretofore delivered to the Lessor is a true, complete and correct copy thereof as now in effect; and

I. the Certificates of Delivery, when executed and delivered by or on behalf of the Lessee, will constitute legal, valid and binding obligations enforceable in accordance with their terms.

SECTION 5. Identification Marks. The Lessee will cause each Unit leased hereunder to be kept numbered with the identifying number set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"C.I.T. CORPORATION, OWNER"

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit, and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit leased hereunder except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units leased hereunder as a designation that might be interpreted as a claim of ownership other than that of the Lessor; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee on

railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Units as permitted under this Lease.

SECTION 6. Taxes. Lessee agrees to pay and to indemnify and hold Lessor and the Agent harmless from, all license and registration fees and all sales, use, personal property, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon) imposed against the Lessor, the Agent, the Lessee or the Units leased hereunder by any governmental or taxing authority upon or with respect to the Units, or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom or upon or with respect to this Lease (excluding, however, any Federal income taxes payable by the Lessor or the Agent in consequence of the receipt of any payments provided for in this Lease and other than the aggregate of all local or state income taxes or franchise taxes measured by net income based on such payments, up to the amount of any such taxes which would be payable to the taxing jurisdictions in which the Lessor has its principal place of business if there were no apportionment to any other taxing jurisdiction, except any such tax which is in substitution for or relieves the Lessee from the payment of any tax or other amount which the Lessee would otherwise be obligated to pay or reimburse the Lessor or the Agent for as provided in this Lease), unless, and to the extent only, that any such tax, levy, impost, duty, charge or withholding is being contested by the Lessee in good faith and by appropriate proceedings and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor. In case any report or return is required to be made with respect to any obligation of the Lessee under this Section or arising out of this Section, the Lessee will either make such report or return in such manner as will show the ownership of

the Units leased hereunder in the Lessor and send a copy of such report or return to the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. All of the obligations of the Lessee under this Section with respect to any fees, taxes, levies, imposts, duties, charges or withholdings (together with any penalties, fines or interest thereon) imposed or accrued before the expiration or other termination of this Lease shall continue in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by, the Lessor and the Agent.

SECTION 7. Payment for Casualty Occurrences. In the event that any Unit leased hereunder shall become worn out, lost, stolen, destroyed, or in the opinion of the Lessor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On the next succeeding rental payment date with respect to such Unit the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit as provided in Section 14 hereof. In the event of the complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of \$4.50 per gross ton for dismantling such Unit. Upon such payment of the salvage value for such Unit, the title to such Unit shall pass to and vest in the Lessee.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price applicable to such

Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	100%	31	82%
2	100	32	82
3	100	33	76
4	100	34	76
5	100	35	76
6	100	36	76
7	100	37	68
8	100	38	68
9	100	39	68
10	100	40	68
11	100	41	59
12	100	42	59
13	100	43	59
14	100	44	59
15	100	45	50
16	100	46	50
17	97	47	50
18	97	48	50
19	97	49	39
20	97	50	39
21	93	51	39
22	93	52	39
23	93	53	28
24	93	54	28
25	88	55	28
26	88	56	28
27	88	57	15
28	88	58	15
29	82	59	15
30	82	60 and thereafter	15

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

SECTION 8. Annual Reports. On or before April 15 in each year commencing with the year 1972, the Lessee will cause to be furnished to the Lessor an accurate statement, as of the immediately preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units leased hereunder as the Lessor may reasonably request and (b) stating that, in the case of all Units leased hereunder repainted or repaired during the period covered by such statement, the markings required by Section 5 hereof shall have been preserved or replaced. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units leased hereunder and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in any Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which the Units leased hereunder may be operated, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Units. In the event that such laws or rules require the alteration of the Units leased hereunder or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Units in

full compliance with such laws, regulations, requirements and rules so long as they are subject to this Lease; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit leased hereunder and any and all parts installed on or replacements made to any such Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest, or encumbrance shall immediately be vested in the Lessor.

The Lessee agrees to indemnify and save harmless the Lessor and the Agent against any charge or claim made against the Lessor or the Agent, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Agent may incur in any manner by reason of entering into or the performance of this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Agent against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising

under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of its ownership of the Units or the leasing thereof to the Lessee.

SECTION 10. Default. If, during the continuance of this Lease, one or more of the following events (herein called "Events of Default") shall occur:

A. default shall be made in the payment of any part of the rental provided for in Section 3 hereof and such default shall continue for five days;

B. any representation or warranty made by the Lessee herein or in any document or certificate furnished the Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect;

C. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units leased hereunder, or any thereof;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

E. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), unless such proceedings shall within 30 days from the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or

such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall within 30 days from the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the

applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units leased hereunder shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units leased hereunder may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (1) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit leased hereunder, which represents the excess of (x) the present value, at the date of such termination, of the entire unpaid sum of all rental payments for such Unit which would otherwise have accrued hereunder from the date of such termination to the

end of the term of this Lease as to such Unit over (y) the then present value of the rental payments which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained in the exercise of Lessor's remedies hereunder available upon the occurrence of an Event of Default or by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental. The present value at any date of any rental payment shall mean an amount which, with interest thereon at the rate of 9 1/2% per annum compounded quarter-annually from such date to the date on which such rental payment would become due and payable, will equal the amount of such rental payment.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the

continuation or recurrence of any such contingencies or similar contingencies.

SECTION 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units leased hereunder at the time of such termination to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to

inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

SECTION 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units leased hereunder in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit leased hereunder including any accession thereto or the interests of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units leased hereunder, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units leased hereunder and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract,

and also to permit the use of such Units upon other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed all of the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease the Lessee will not assign any Unit leased hereunder to service involving the regular operation and maintenance thereof outside the United States of America and that during such term any use of any such Unit outside the United States of America will be limited to incidental and temporary use in Mexico and Canada.

SECTION 13 Purchase or Renewal Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (i) to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease for periods of five years commencing on the scheduled expiration of the term of this Lease, provided that no such extended term shall extend beyond April 15, 2001, at a rental payable in 20 quarter-annual payments, each in an amount equal to the following percentages of the Purchase Price of such Unit: during the first five-year period, 1.5719%; during the second five-year period, 1.0479%; and during the final five-year period, .7860%; the first quarter-annual payment for each five-year extended term period to be made on the date which is three calendar months after the commencement date of the applicable extended term period, and the remaining nineteen quarter-annual payments for each five-year extended term period to be made on each subsequent quarter-annual anniversary date of the first quarter-annual payment due date for such five-year extended term period, and (ii) to purchase all, but not fewer than all, the Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an

arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

SECTION 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the

expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Units abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to Section 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

SECTION 15. Opinion of Counsel. Concurrently with the execution and delivery of this Lease, the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, dated as of the date delivered, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease, the Investment Agreement and the Purchase Order Assignment;

B. this Lease, the Investment Agreement and the Purchase Order Assignment have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms;

C. this Lease, when filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act will protect the Lessor's interests in and to the Units leased hereunder and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease, the Investment Agreement and the Purchase Order Assignment will not result in any breach of, or constitute a

default under any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound;

F. there are no suits or proceedings pending or, to the knowledge of Lessee's counsel, threatened in any court or before any regulatory commission, board or other administrative governmental agency against or affecting Lessee, which may have a material adverse effect on the financial condition or business of Lessee;

G. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect any property or interests therein of the Lessee, now attaches or hereinafter will attach to the Units leased hereunder or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such lien may attach to the rights of the Lessee hereunder (subject to all terms and provisions of this Lease) in and to the Units; and

H. the Certificates of Delivery, when executed and delivered by the Lessee, will constitute legal, valid and binding obligations enforceable in accordance with their terms.

SECTION 16. Recording; Expenses. Prior to the delivery and acceptance of any Units, the Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor, of the Lessor's title to the Units, or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidences of all such filing, recording or depositing.

The Lessee will also pay, or will upon demand reimburse the Lessor for all reasonable fees and costs of any attorney (except Lessor's house counsel) specially retained by Lessor to take any action to protect the interests of the Lessor in connection with this Lease including, but without limitation, the institution of any action or proceeding to enforce the terms of this Lease.

SECTION 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any non-payment of rentals due hereunder shall result in the obligation on the part of the Lessee promptly to pay also interest at the rate of 10% per annum on any part of such rental not paid on the due date thereof for any period during which the same shall be overdue.

SECTION 18. Lessor's Agency. The Agent is acting herein as agent for the Lessor which will be the owner of all Units leased hereunder. The Agent hereby represents and warrants to the Lessee that the Agent is duly authorized to enter into this Lease as agent for the Lessor and to perform, as agent for the Lessor, all the obligations of the Lessor hereunder.

SECTION 19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at 650 Madison Avenue, New York, N. Y. 10022, Attention: Vice President, C.I.T. Leasing Corporation, National Division;

if to the Lessee, at 13530 Michigan Avenue, Dearborn, Michigan 48126;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 20. Severability; Effect and Modification of Lease.

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

SECTION 21. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of February 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 22. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 23. Lessor's Right to Perform for Lessee. If the Lessee fails to duly and promptly perform any of its obligations under this Lease or fails to comply with any of the covenants or agreements contained herein, the Lessor may itself perform such obligations or comply with such covenants or agreements, for the account of Lessee without thereby waiving any default, and any amount paid or expense (including reasonable attorneys' fees) incurred by Lessor in connection with such performance or compliance shall together with interest thereon at the rate of 10% per annum, be payable by Lessee to Lessor on demand.

IN WITNESS WHEREOF, the Lessee and the Agent acting for the Lessor, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

C.I.T. LEASING CORPORATION
as Agent for
C.I.T. CORPORATION, Lessor

By T. J. McPhillis
Vice President

Attest:

By [Signature]
Assistant Secretary

DETROIT, TOLEDO AND IRONTON
RAILROAD COMPANY, Lessee

By A. C. Robinson
Vice President

Attest:

By [Signature]
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 24th day of FEBRUARY, 1971, before me personally appeared T. J. Mc PHILLIPS, to me personally known, who, being by me duly sworn, says that he is a Vice President of C.I.T. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jules K. Roth
Notary Public

My Commission Expires

MARCH 30, 1972

JULES K. ROTH
Notary Public State of New York
No. 31-8674300
Qualified in New York County
Commission Expires March 30, 1972

(Seal)

STATE OF MICHIGAN }
COUNTY OF WAYNE } SS.:

On this 26th day of February, 1971, before me personally appeared A. C. Robinson, to me personally known, who, being by me duly sworn, says that he is a Vice President of DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Louise K. White
Notary Public

My Commission Expires

LOUISE K. WHITE
Notary Public, Wayne County, Mich.
My Commission Expires Apr. 30, 1974

(SEAL)

ANNEX A
DELIVERY OF EQUIPMENT

Detroit
Toledo &
Ironton Railroa
Company
Road Numbers
(both inclusiv

<u>Type</u>	<u>Quantity</u>	<u>Specifications</u>	<u>Place of Construction</u>	<u>Builder</u>	<u>Delivery</u>
86 ft. 6 in. High Cube Box Cars, Class XL	17	Detroit, Toledo & Ironton Purchase Order No.A75711 dated November 16, 1970	Greenville, Pa.	Greenville Steel Car Co.	March, 1971

26750-26766

ANNEX B TO LEASE
CERTIFICATE OF DELIVERY

Certificate of Delivery issued pursuant to the Lease Agreement for Railroad Equipment (the "Lease") dated as of February 15, 1971 between C.I.T. Corporation ("Lessor"), acting through its agent and affiliate, C.I.T. Leasing Corporation and Detroit, Toledo and Ironton Railroad Company ("Lessee").

Lessor hereby accepts and leases to Lessee and Lessee hereby accepts and leases from Lessor the following Units pursuant to the Lease:

<u>Description of Units</u>	<u>Quantity</u>	<u>Numbers both) inclusive)</u>
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The Delivery Date of such Units is the date of this Certificate.

Lessee confirms that the Units listed herein:

1. have been accepted by Lessee at
_____;
2. are in good order; and
3. are each marked as showing Lessor's
interest in accordance with Section 5
of the Lease.

The Lessee warrants that the Units described herein are new and that no original use thereof has commenced prior to the date hereof.

All of the terms used herein which are defined in the Lease are used herein as so defined.

By _____

Authorized Representative of

C.I.T. LEASING CORPORATION
as Agent for

C.I.T. CORPORATION, Lessor

and

DETROIT, TOLEDO and IRONTON
RAILROAD COMPANY, Lessee

Date